THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 6236 of 2003

Date: 21.10.2005

Between:

V.Gopalam, formerly Assistant Registrar,

National Institute of Rural Development,

Rajendra Nagar, Hyderabad-500 030.

…Petitioner

and

1)Executive Council, National Institute of Rural

Development, rep. by its Chairman and Hon'ble

Minister of State, Rural Development, Government

Of India, Krishibhavan, New Delhi-110001

& 3 others

…Respondents

ORDER:

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1. Challenging the action of the respondents in issuing office memorandum dated 20.03.2003, the present Writ Petition is filed.

2. The facts, in brief, which are necessary for disposal of this Writ Petition are as follows:

The petitioner was appointed as Assistant Registrar with the third respondent-institute in December, 1988 and permanently absorbed in the services of the institute from December, 1993; that prior to his appointment, he was working as an Officer in the office of the Chief General manager, Telecom (for short, 'CGMT'), Bhopal; that vide letter dated 27.07.1998, the Deputy Director General (for short, 'the DDG') of the institute sought petitioner's comments on certain points in connection with letter dated 12.01.1998 received from the CGMT, Bhopal regarding his pay fixation, and the petitioner clarified the same vide letter dated 11.08.1998; that after preliminary enquiry, the DDG issued an office order dated 01.09.1998 for fixation of petitioner's pay pursuant to letter of CGMT, Bhopal dated 12.01.1998; thereafter, the petitioner was transferred to other places on the ground of pendency of enquiry, but as the enquiry could not be completed as directed by this Court, he was restored to the same post of Assistant Registrar; that after completion of the enquiry on various charges, the enquiry officer forwarded a copy of the report dated 16.1.2002 to the petitioner on 29.11.2002 for his written representation, which was submitted on 12.12.2002; that on 20.03.2003, the second respondent communicated orders of the first respondent-council in its meeting dated 17.03.2003, imposing punishment of compulsory retirement on the petitioner; that the Registrar of the institute, who bore grudge against the petitioner, misled the Executive Council of the institute; since the petitioner raised serious objection to the conduct of respondents 2 and 3, the impugned action had come to be initiated; that before forwarding the enquiry report to the petitioner for written representation, the disciplinary authority, having arrived at an opinion to impose a major penalty but not competent to do so, should have remitted the entire enquiry records to the Executive Council for assessment of evidence

on record; that the letter dated 04.01.2002 of the NIRD Employees' Association was not shown the petitioner; that apart, the prescribed rules are not followed during the enquiry and there is clear violation of principles of natural justice; that the proceedings of the Executive Council suffer from many infirmities, illegalities and the same is without sufficient reasons; that the entire action of the respondents is vitiated; that the punishment imposed on the petitioner is grossly disproportionate; that as per the instructions of the Government of India, the second respondent is not competent to issue and sign the orders imposing the major penalty; hence, the Writ Petition.

3 . The counter affidavit filed by respondents 1 to 3 denied the averments in the petition and stated that that first reference to the letter dated 12.01.1998 addressed by the CGMT, Bhoptal conveying the judgment of the Supreme Court of India in Civil Appeal No. 8658 of 1996, was made in the file on 20.06.1998, that too after the association made out the issue of suppression, and even at that stage, pay fixation of the petitioner was done without taking into account the effect of the judgment of the Apex court; that the petitioner entertained correspondence in this regard with the CGMT, Bhopal without obtaining prior approval of the competent authority viz. the Registrar, though the correspondence from the CGMT, Bhopal was addressed to the Registrar and only a copy was endorsed to the petitioner; to deal with the matter in fair and objective manner, the petitioner should not have dealt with the matter; that the charge memo was issued on the basis of the acts of omissions and commissions by the petitioner and the enquiry was conducted as per the relevant rules and regulations following the principles of natural justice; that it was clearly established in the enquiry that the petitioner suppressed the information contained in letter of CGMT, Bhopal conveying the judgment of the Supreme Court of India in Civil Appeal No. 8658 of 1996 from the superior officers of the institute, and avoided recovery of excess salary drawn by him and consequently gained monetary benefits taking advantage of his official position;

that on detailed appreciation of the facts and circumstances, the enquiry officer recorded the findings against the petitioner, which were accepted by the disciplinary authority; that in the meeting of Executive Council held on 17.03.2003, the unanimous decision to impose the penalty of compulsory retirement from service was taken; that to ensure a free and fair enquiry, the petitioner was transferred to other places; that the petitioner was restored to his original position with all facilities, as the full-fledged meeting of the Executive Council could not be held before the deadline set by this Court; that the decision to impose the penalty was taken in a full-fledged meeting of the Council rather than by way of a circulatory resolution; that the petitioner can not question the method adopted by the Executive Council in examining the records; that the Registrar is responsible for ensuring all necessary arrangements for all important meetings including the meeting of Executive Council; that the third respondent, in his official capacity, was required to prepare parawise comments on the written representation filed by the petitioner; hence, the Writ Petition is liable to be dismissed.

4. The fourth respondent filed counter affidavit denying the averments in the petition and stating that he has no malice against the petitioner and that he was primarily responsible for permanent absorption of petitioner in the third respondent-institute. The counter affidavit runs on the same lines as that of the respondents 1 to 3 and prayed for dismissal of the Writ Petition.

5. The learned counsel for the petitioner contended that the findings of the enquiry officer are perverse; that parawise comments relied on by the disciplinary authority were not put to the petitioner and the written complaint dated 04.01.2002 was not made a part of record in the enquiry and in the decision making process, which vitiate the proceedings; that there is no suppression of letter dated 12.01.1998 received from the CGMT, Bhopal with regard to pay fixation of the petitioner and the said letter came from the Registrar’s office and if that letter was suppressed by the petitioner wilfully and wantonly, it

would not have gone to the finance department; that the Deputy Financial Advisor was not under control of the petitioner; therefore, the act does not amount to a misconduct; that the self-same alleged misconduct was enquired into by the Director General in the year 1998 itself and administered a personal warning to the petitioner after perusal of the report of the DDG and therefore, the impugned enquiry amounts to double jeopardy. The learned counsel also contended that the petitioner was denied of a fair and reasonable opportunity to defend in the enquiry by way of non-production of documents and refusal to call critical and important witnesses. He relied upon various decisions, which will be referred to at appropriate time. He also contended that the fourth respondent entertained a *mala fide* action and hatched up a plan sensing that he was responsible for complaints made against the fourth respondent to the Central Vigilance Commission regarding certain administrative and financial irregularities. He further contended that the punishment imposed is shockingly disproportionate to the proved misconduct and shocks conscience of the Court. Therefore, he prays to allow the Writ Petition.

6 . On the other hand, the learned counsel appearing for the respondents 1 to 3 contended that after following the principles of natural justice, fair and impartial enquiry was conducted by the enquiry officer giving reasonable opportunity to the petitioner to participate and defend it; that he, being a responsible officer of the institution in the cadre of Assistant Registrar, ought not have suppressed the letter regarding fixation of his pay received from the erstwhile employer and that the letter has not seen the light of the day for about six months; that the petitioner took responsibility in addressing the letter to the parent department as if he is the Registrar of the institute; therefore, the action of the petitioner is with ill will and motivated; that the findings of the disciplinary authority are not based upon the parawise remarks or on the allegations in the complaint dated 04.01.2002, but based upon some evidence and therefore, the

findings can not be said to be perverse; that the job of the petitioner is very sensitive and as it is a case of loss of confidence, the major punishment is imposed; that it is not a case of double jeopardy since no enquiry was conducted on prior occasion and the punishment, if any, alleged to have been imposed less than the one prescribed in the rules, is not a punishment so as to attract the maxim double jeopardy; hence, he prayed to dismiss the Writ Petition. The learned counsel relied on several decisions, which will be referred to at appropriate time.

7 . The learned counsel appearing for the fourth respondent contended that the disciplinary proceedings initiated by the fourth respondent can not be said to be with a *mala fide* intention; as a matter of fact, the fourth respondent addressed a letter to the competent authorities for absorption of the petitioner in the institution; that no *mala fides* are attributed to the first respondent at any point of time except in the Writ Petition; that there is no allegation of bias against the enquiry officer; that it is the Executive Council which has taken the decision and not the fourth respondent; hence, there are no grounds to interfere with the impugned proceedings.

8. The law is well settled that in the proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. In the decision making process, if the Court, Tribunal or authority deciding the case has ignored a vital evidence and thereby arrived at an erroneous conclusion or has misconstrued the provisions of the relevant act or misunderstood the scope of its jurisdiction, the power under Article 226 of the Constitution of India can be invoked to set aside such erroneous findings and also to prevent gross injustice done to the party. While examining and scrutinizing the decision making process, it becomes inevitable to

also appreciate the facts of a given case as otherwise the decision can not be tested under the grounds of illegality or irrationality or procedural impropriety. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the court to review the evaluation of the facts by the decision makers.

9 . The disciplinary proceedings are held in exercise of domestic jurisdiction of the employer. Holding of such proceedings, of which enquiry into the misconduct of the employee is most important feature, is a precondition for imposition of any punishment. The entire procedure for initiating and concluding the disciplinary proceedings is done governed by the Rules having statutory powers. Strict rules of the Evidence Act are not applicable in it since the departmental authorities are not like civil Courts. Although the Evidence Act is not applicable to the disciplinary proceedings, still the misconduct of the delinquent officer must be established by some cogent evidence on which an objective finding can be given about the commission of offence or misconduct, and conjecture or surmise can not substitute the requirement of proof. Therefore, some evidential material must be there to prove the guilt of the employee in respect of charges levelled against him. When the conclusions are based upon some existent and relevant material, normally this Court will not interfere with the administrator's decision. This Court, however, will interfere if the finding is based upon misreading of the material evidence or is so unreasonable or grossly unjust that no reasonable authority could arrive at that conclusion. It is also settled principle that the factual findings of the disciplinary authority are not open to challenge and the powers of the judicial review does not extend to examine the correctness or trust of the charges. Interference is permissible only when the charges framed are not made out or the charges are contrary to law.

10. Sufficiency of evidence has come up for consideration in the decision in *Sher Bahadur v. Union of India & others* wherein it is held as follows: (para 7)

> "It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law."

11. In another decision in *Kumaon Mandal Vikask Nigam Ltd. V. Girja Shankar Pant & others*, it is held as follows:

> "Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. Judicial review of the adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person."

12. While considering the judicial review of administrative action, the Apex Court in *Indian Railway Construction Co. Ltd. V. Ajay Kumar* held as follows: (para 15)

> "The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

13. In another decision in *Lalit Popli v. Canara Bank & others,* it has been held as follows: (para 17)

> "While exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority."

14. In another case in *R.S.Saini v. State of Punjab & others*, the Apex Court held as follows: (para 19)

> "We have noted earlier that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within that limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice or perversity, non-application of mind and tainted by malice and having come to the conclusion that the report of the inquiring authority can not be faulted with on any of the grounds stated above, we are unable to agree with the appellant."

15. Bearing the above principles in mind, it has to be seen whether the findings of the disciplinary authority are perverse or whether they are based upon some evidence on record and whether the principles of natural justice are followed in conducting the enquiry and whether a fair and reasonable opportunity was given to the petitioner to defend his case effectively and whether the alleged acts would amount to misconduct so as to impose the punishment.

16. At the relevant point of time, the petitioner was working as Assistant Registrar with the third respondent-institute. Prior to joining with the third respondent-institute, he worked as an Officer in the Department of Telecom, Government of India. While he was working in the office of the CGMT, Bhopal, he was absorbed into the third respondent-institute in December, 1988. The entire gravaman of the charge in the departmental proceedings is suppression of the official communication dated 12.01.1998, which was addressed to the Registrar of the third respondent-institute by the CGMT, Bhopal.

The letter dated 12.01.1998 reads as follows:

"Sub: Judgment of Supreme Court in Case of Civil Appeals and Pay fixation of Shri V.Gopalam and others.

Ref: C.G.M.T.Bhopal sanction Memo No.AP-40-04/87/132, dated 02-01-1998.

Sir,

A copy of the above sanction memo revising the pay of Shri V.Gopalam as per Judgment of CAT, Hyderabad stands cancelled by Supreme Court now. Hence, the stepping up of pay given has to be reversed and payment paid so far to be recovered immediately and recovery particulars may please be intimated to the undersigned.

As the Officer has been permanently absorbed in your organization."

17. The contention of the petitioner is that the said letter has been in the office of the Registrar and as per practice, it went down to the concerned clerk, and the question of suppression of this letter by the petitioner does not arise because the letter was under process by the Finance Department. He further relied on the observation of the Enquiry Officer in his report, which reads as follows:

> "In fact, the Deputy Financial Adviser's note dt. 28.1.98 at PG.42/n to 44/n of personal file was seen by Registrar on 4.2.98 and was circulated to DDG which in turn sought the comments of Sri V.Gopalam on 4.2.98. Sri V.Gopalam's note in response to that is dt.26.6.98 wherein he speaks of his representation to DOT during March'98 without specifying the Supreme Court ordering reversal but referred to DOT Lt. Dt.13.2.98 for refixing the pay at normal stage from 12.9.97."

Therefore, basing on the said observation, the learned counsel for the petitioner contended that since the Deputy Financial Adviser, who is admittedly not under the control of the petitioner, has already prepared a note and therefore, question of suppression of the letter by the petitioner does not arise.

18. On the other hand, the learned counsel for the respondents

contended that though the letter dated 12.01.1998 was received in the office on 20.01.1998, the letter has not seen the light of the day till the pay fixation of the petitioner without taking into account the Supreme Court judgment, was done and approved by the Executive Council. It is not in dispute that the pay fixation of the petitioner was finalized and approved on 26.06.1998 without taking into account the judgment of the Supreme Court of India.

19. Regarding the charges, the charges levelled against the petitioner as per Office Memorandum dated 10.06.2002 are as follows:

> "1. That Shri V.Gopalam, while working as Assistant Registrar in NIRD deliberately suppressed information contained in the Department of Telecommunications letter No. TA-106/2356/5121, dated 12/1/1998 conveying the judgment of the Hon'ble Supreme Court in Civil Appeal No.8658 of 96 from higher authorities, thereby avoiding recovery of excess salary drawn by him and consequently gained monetary benefits.
>
> 2. That he entered into correspondence with his erstwhile parent department (Dept. of Telecommunications) in the name of Registrar without due authorization and without bringing the matter to the notice of the Registrar. That he misused his position in corresponding with his erstwhile parent department with a view to gain personal benefits.
>
> 3.That he continued to draw higher pay and allowances from 5/12/1993 till this day in spite of an office order issued to him by the then DDG in Office Order No.349, vide reference No.DDG/98/6, dated 1/9/1998, refixing his salary upto 4/12/1993."

The enquiry officer conducted detailed enquiry as per rules on several dates by examining the witnesses and thereafter submitted his report. In the enquiry, charges 1 and 2 were proved whereas on charge no.3, the petitioner was exonerated. A plea has been taken

by the petitioner in the affidavit that he was denied of a fair and reasonable opportunity to defend the enquiry by way of non-production of documents and refusal to call the critical witness Smt. Anita Karwal, former Registrar of NIRD. Except making such bald and omnibus allegation, in what manner he was denied reasonable opportunity for defending his case in the enquiry and what are the documents for which he was denied production, have not been stated. In the absence of specific plea with regard to denial of any opportunity or right to go through the documents or non-supply of documents or not allowing the defence witnesses to be examined, the same can not be a ground to quash the findings of the enquiry officer.

20. Now, it is to be seen that whether the findings are based upon the evidence on record. The first and foremost contention of the learned counsel for the petitioner is that parawise comments prepared by the institute and the written complaint of the NIRD Employees' Association dated 04.01.2002, have not been furnished to the petitioner and therefore, it vitiates the decision making process. Had the disciplinary authority relied solely on the parawise comments prepared by the institute and also the contents of the written complaint dated 04.01.2002, then certainly, the petitioner should have been given an opportunity to explain. Incidentally, the parawise comments prepared by the institute and the written complaint dated 04.01.2002 have been referred to, in the impugned proceedings. The findings are not passed upon the parawise comments or on the allegations in the complaint. Therefore, the contention of the learned counsel for the petitioner can not be accepted.

21. The enquiry officer on assessment of evidence in respect of each charge, came to the conclusion that the charged officer with his knowledge and experience did not behave with due care and attention expected from him and he ought to have known the

propriety of not bringing the contents of letter dated 12.01.1998 to the knowledge of his superiors. It is not in dispute that the letter dated 12.01.1998 addressed to the Registrar of third respondent-institute was received in the office on 20.01.1998. The said letter contains the particulars of revision of pay fixation of the petitioner. A note was prepared thereon by the Deputy Financial Adviser on 28.01.1998 and the same was seen by the Registrar on 04.02.1998. In turn, the DDG sought comments of the petitioner on 04.02.1998, but the petitioner did not give any response to that note. He gave response for the first time on 26.06.1998 wherein he speaks of his representation to the Department of Telecom during March, 1998 without specifying the Supreme Court order. Therefore, at that juncture, it is for the petitioner to give an explanation specifically mentioning the Supreme Court judgment and he ought not to have entertained correspondence with the CGMT, Bhopal, who is his erstwhile employer. No doubt, a copy of the proceedings dated 12.01.1998 was also marked to the petitioner. Had the petitioner any grievance, he should have corresponded with the CGMT, Bhopal through proper channel. But, he can not take the role of the Registrar and without authorization from the Registrar, he is not supposed to entertain the correspondence with CGMT, Bhopal especially in view of the fact that the issue is relating to fixation of his own pay. In such circumstances, he should and ought to have entertained correspondence with the CGMT, Bhopal only after obtaining written authorization/permission from the Registrar. Several endorsements were made on the letter dated 12.01.1998. The contents of the said letter was within the knowledge of some other staff members and officers concerned. By virtue of the proceedings dated 12.01.1998 from the CGMT, Bhopal, stepping up of pay of the petitioner has to be reversed and recoveries have to be effected. If really, the petitioner has no malicious intention, he would have prepared a note and forwarded the same to the appropriate authority, who has to downgrade the pay of the petitioner in pursuance of the judgment of the Supreme Court. Basing on the then existing pay, the pay fixation of the petitioner was finalized without taking into account the judgment of the Supreme Court of

India and approved on 26.06.1998. After finalization of pay fixation, the petitioner gave response in his letter dated 26.06.1998 without there being any reference to the Supreme Court judgment. It is not a case of any inadvertent mistake or a mistake that crept in due to oversight. It is a matter relating to pay fixation of petitioner himself. Being in-charge of establishment wing of the institute, the pay particulars of the employees of the institute have to be under the control of the petitioner. Since the pay fixation under the letter dated 12.01.1998 involves his own case, it is his duty and responsibility to bring it to the notice of the higher officials.

22. It is an undisputed fact that the petitioner has drawn higher pay and allowances than he was eligible as per the judgment of the Supreme Court. If the letter of the CGMT, Bhopal has been placed before the Registrar, the pay fixation would not have been made and approved on 26.06.1998. But, thereafter, the pay fixation was modified and revised and last pay certificate has been issued by the Accounts Officer. The proceedings dated 01.09.1998 in office order no.349 would clearly goes to show that in pursuance of the Supreme Court judgment in Civil Appeal No.8658/96, the pay of the petitioner was revised. In pursuance of the fixation of revised pay scales, the Finance Department proposed to recover certain amounts from his salary. The petitioner admittedly on 14.09.1998 paid that amount. But, the fact remains that though the petitioner was having knowledge about stepping down of pay as per the judgment of Supreme Court, the same was not brought to the notice of the higher authorities till his pay fixation was done without taking into account the judgment of the Supreme Court and approved by the competent authority on 26.06.1998. Since it is a case relating to petitioner himself, it is expected that he should be more careful and vigilant, and he should have acted promptly by preparing note file in pursuance of the letter received from the CGMT, Bhopal and forwarded the same to the higher authorities, who has to take appropriate decision. But, he kept quiet for about six months till the

pay fixation was effected. Simply because the Finance Department has prepared a note on 28.01.1998, it does not mean that the petitioner is relieved from reporting to the Registrar. The reasons are obvious. Even assuming for a moment that the Deputy Financial Adviser's note was seen by the Registrar on 04.02.1998 and the petitioner's comments were called for by the DDG, still he did not prepare any remarks for about four months allowing the new pay fixation to be approved. Therefore, the findings of the enquiry officer are based on some material on record and they can not be said to be perverse. This Court can not take a different view even assuming that there are two views possible on the evidence on record, in view of the fact that the scope of judicial review is limited to testing of decision making process, but not against the decision itself.

23. The second charge is that the petitioner entered into correspondence with the erstwhile parent department. There must be prior authorization from the Registrar, when he is entertaining correspondence with erstwhile parent department on behalf of the Registrar, especially in his own matter. There is no such material produced to show that the petitioner was authorized by the Registrar to entertain correspondence with his erstwhile parent department. When he is substantiating his own case, it is expected from him that he should have taken written authorization/permission from the Registrar. Therefore, according to the enquiry officer, both the charges were proved. The findings of the enquiry officer are not shown to be perverse or contrary to the evidence on record. Regarding the third charge, the enquiry officer recorded finding exonerating the petitioner from it.

24. Basing on the enquiry officer's report, the disciplinary authority imposed major penalty of compulsory retirement with immediate effect. The disciplinary authority considered all the relevant material available on record and also the arguments advanced by the

petitioner and recommended imposing the impugned punishment. Though it is stated that there is no specific challenge made to the disciplinary authority's order and only the proceedings dated 20.03.2003 issued by the Director General are under challenge, but the disciplinary authority is Executive Council and the disciplinary authority only forwarded the decision of the Council.

25. It is contended by the learned counsel for the petitioner that since self-same allegations of misconduct were enquired into by the DDG in the year 1998 and the Director General, who is disciplinary authority, administered a personal warning on the petitioner after perusal of the report of the DDG, and therefore the same allegations can not be made basis for the present charge memo dated 10.06.2002 and so, all proceedings thereafter can not be sustainable. The learned counsel further contended that though it may not amount to double jeopardy, but since the warning was given to the petitioner on the charges, he can not be tried again for the same allegations.

26. The learned counsel for the respondents relied on several decisions of the Apex Court on double jeopardy. Except the decision of Constitutional Bench reported in *S.A. Venkataraman v. Union of India & another,* the other cases are with reference to double jeopardy. It is held in the said decision (*6 supra*) as follows:

> "In order to enable a citizen to invoke the protection of clause (2) of Article 20 of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted and punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted."

27. Admittedly, in the case on hand, there is no enquiry conducted on

earlier occasion. Basing on the report of the DDG, it is stated that the disciplinary authority has given a warning. It is not in dispute before this Court that warning is not a punishment under the disciplinary rules governing the service conditions of the employees of the third respondent-institute. It is also not in dispute before this Court that the minimum punishment provided for misconduct starts with 'Censure' and ends with major punishment of 'dismissal from service'. Since the alleged warning given by the disciplinary authority on earlier occasion does not amount to a punishment, the question of double jeopardy does not apply to the facts of the present case. It is not in dispute that a preliminary enquiry was conducted in July/August, 1998. Perhaps that is the reason why the disciplinary authority also came to conclusion that this is the first time the proceedings under CCS (CCA) Rules were initiated against the officer concerned for the lapses. Even if a warning has been given on earlier occasions, the same can not bar the authorities to initiate the disciplinary action against the petitioner. On this aspect, it is pertinent to refer the decision in *Indian Drugs & Pharmaceuticals Ltd. V. R.K. Shewaramani* wherein it is held as follows: (para 10)

> "There is no requirement in law that for continuing with fresh proceedings the charge-sheet issued must indicate that the previous proceedings pending have been given a go-by. The employer is free to proceed in as many departmental proceedings as it considers desirable. Even in a hypothetical case in two of the departmental proceedings the finding is in favour of the delinquent employee, yet in another departmental proceeding a finding adverse to the delinquent officer can be recorded. Merely because the two proceedings were pending, that did not in any way stand on the way of the employer to initiate another departmental proceeding and that too on the basis of an amended provision which came into effect after initiation of the previous departmental proceeding."

Therefore, the contention of the learned counsel for the petitioner that the earlier warning given by the disciplinary authority would be a bar for initiating the present disciplinary action, can not be accepted and it is devoid of merits.

28. The other question remains to be answered in this Writ Petition is whether the punishment imposed is disproportionate to the proved misconduct. The learned counsel for the petitioner contended that in pursuance of the letter dated 12.01.1998 received from the CGMT, Bhopal the pay fixation was made and recovery has been effected and hence, the same does not require a major punishment of compulsory retirement from service. He contends that at best, it amounts to a minor misconduct. He relied on a decision in *Regional Manager & Disciplinary Authority, State Bank of India, Hyderabad & another v. S.Mohammed Gaffar,* wherein it is held as follows:(para 10)

> "The High Court seems to have overlooked the settled position that in departmental proceedings, insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice."

In the aforesaid decision also, the acts which come major misconduct and the acts which come under minor misconduct were explained. The two awards which are relevant for taking the disciplinary action would define the expressions 'gross misconduct' and 'minor misconduct'. Therefore, the above decision has no application to the facts of the present case.

29. In the decision reported in *Chairman and Managing Director, United Commercial Bank & others v. P.C. Kakkar*, it is held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks conscience of the court/tribunal, there is no scope for interference; further, to shorten litigation, the court may in exceptional or rare cases impose appropriate punishment after recording cogent reasons in support thereof; in the normal course, if

the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

To the same effect, in another decision in *State Bank of India & others v. Samarendra Kishore Endow & another*, it is held that when the punishment of removal imposed on the employee is harsh, the proper course is to send the matter either to the disciplinary authority or appellate authority.

30. The learned counsel for the petitioner placed further reliance on a decision in *A.L. Kalra v. Project and Equipment Corporation of India Ltd* wherein it is held as follows:

> "… What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any *ex post facto* interpretation of some incident may not be camouflaged as misconduct."

31. The learned counsel for the respondents relied on several decisions of the Apex Court in *State of U.P. & another v. C.S.Sharma, State of Madhya Pradesh v. Chintaman Sadashiva Waishampayam , Khem Chand v. The Union of India & others*, *State of Bombay(now Maharashtra) v. Nurul Latif Khan*, *Rama Kant Misra v. State of U.P. & others*, *Ved Prakash Gupta v. M/s. Alton Cable India (P) Ltd., & B.C.chaturvedi v. Union of India & others*. In all these decisions, it is held that the punishment must be in proportionate to the gravity of the proved misconduct and penalty imposed must commensurate with the gravity of the offence charges.

32. Bearing all the aforesaid principles in mind, it is to be seen whether the punishment of compulsory retirement shocks the conscience of the Court. By virtue of the Supreme Court Judgments, the pay of the petitioner had to be stepped down and the arrears have to be recovered from him. The said fact was intimated by the erstwhile employer of the petitioner viz. CGMT, Bhopal, to the Registrar of third respondent-institute. The said letter did not see the light of the day till the pay of the petitioner was fixed. Being in-charge of the establishment, it is the first and foremost duty of the petitioner to bring it to the notice of his higher officials, and the petitioner should not have entertained correspondence with the erstwhile employer, since it involves none other than his own case that too relating to financial matters. So, in all fairness, he should have set an example to the other employees. Failure to bring the letter to the notice of the higher officials and compliance thereof being in such responsible position, is a serious misconduct. The conduct of the petitioner would clearly demonstrate that he wanted to gain personal advantage by virtue of his office by keeping the correspondence with him. Though the letter of the CGMT, Bhopal may be within the knowledge of the other persons, but at the same time, it is the petitioner who is responsible to put up a note on it. But, it had seen the light of the day after fixation of his pay ignoring the judgment of the Supreme Court and approval of the same by the competent authority. The petitioner tried to take advantage of the situation and succeeded to do so. Hence, under no stretch of imagination, it can be said that the punishment imposed on him is disproportionate to the proved misconduct.

33. It is also stated that the fourth respondent was responsible for initiation of the proceedings and therefore, *mala fides* are attributed to the fourth respondent as the person responsible for initiation of the enquiry. In case *mala fides* are attributed to the fourth respondent, the same are required to be established in view of the decision in *E.P.Royappa v. State of Tamil Nadu & another* case, wherein it is

held as follows:

> "Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

In this case, it is alleged that after the petitioner gave representations to the Executive Council regarding certain irregular appointments, irregular administrative arrangements, irregular withdrawal of amounts, etc. the present enquiry has been initiated after lapse of four years by its proceedings dated 10.06.2002 so as to victimize and harass and to take revenge against, the petitioner with a *mala fide* intention; that the acquiescence of respondents 2 and 3 in this regard betrays bias and mala fide. Whatever be the allegations levelled against the fourth respondent, who is an *eo nominee* party, the same has been specifically denied by him. On the other hand, it is specifically stated that because of the fourth respondent only, the petitioner was permanently absorbed in the NIRD. The said averment is not denied by the petitioner. Even otherwise, all the allegations levelled against the fourth respondent have not been taken at the earliest opportunity, and for the first time in this Writ Petition, the allegations such as malice have been made against the fourth respondent.

34. The Executive Council of the third respondent-institute, which is the disciplinary authority in this case, consists of Officers of senior I.A.S. cadre and other important personalities. It is a multi member body with distinct members representing various walks of life and several top rank officials and non-officials, academicians. Some of the members are nothing to do with the affairs of the institute. It has taken a unanimous decision in its meeting to retire the petitioner compulsorily. It is not in dispute that the order of the compulsory retirement is a major punishment. At the same time, it is pertinent to

mention on this aspect a decision in *M.L. Binjolkar v. State of M.P.*, wherein it has been held as follows: (para 5)

> "… The scope of judicial review in matters involving orders of compulsory retirement has been explained in several cases. It is a tried law that an order of compulsory retirement is not a punishment. The employer takes into account various factors emanating from the employee's past records and takes a view whether it would be in the interest of the employer to continue services of the employee concerned. It can certainly pass an order of compulsory retirement when the employee is considered to be a dead wood and practically of no utility to the employer. The purpose and object of premature retirement of a government employee is to weed out the inefficient, **the corrupt, the dishonest** or the dead wood from government service…"

Therefore, as it is not a case where the punishment shocks the conscience of the court, it need not be interfered with.

35. In the light of the above circumstances, the Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

21.10.2005

DRK